

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 THE BANK OF NEW YORK MELLON,)

11 Plaintiff(s),)

12 vs.)

13 IMAGINATION NORTH LANDSCAPE)
14 MAINTENANCE ASSOCIATION, et al.,)

15 Defendant(s).)
16

Case No. 2:16-cv-00383-MMD-NJK

ORDER

(Docket No. 82)

17 Pending before the Court is Plaintiff's motion to stay discovery pending resolution of dispositive
18 motions. *See* Docket No. 82; *see also* Docket No. 83 (motion for summary judgment). The Court has
19 previously denied similar motions filed in other cases. *See JPMorgan Chase Bank v. RHKids, LLC*,
20 2017 U.S. Dist. Lexis 123044 (D. Nev. Aug. 4, 2017) (citing *Bank of N.Y. Mellon v. Vegas Prop. Servs.*,
21 2017 U.S. Dist. Lexis 66682 (D. Nev. May 2, 2017)). For the reasons discussed therein and below, the
22 Court **DENIES** the motion to stay discovery.

23 The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*,
24 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic
25 or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay*,
26 *Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making
27 a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda*
28 *Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to

1 stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the
2 potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken
3 a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff
4 will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.
5 Nev. 2013).¹

6 The Court finds that a stay of discovery is not appropriate in this case. Most significantly, the
7 Court has taken a preliminary peek at the motion for summary judgment and is not convinced that it will
8 be granted.² It bears repeating that the filing of a non-frivolous dispositive motion, standing alone, is
9 simply not enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the
10 Court must be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That standard is
11 not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the court’s mind that
12 the dispositive motion will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting *Trazska*
13 *v. Int’l Game Tech.*, 2011 WL 1233298, *3 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court
14 requires this robust showing that the dispositive motion will succeed because applying a lower standard
15 would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at *4).

16 Plaintiff’s motion for summary judgment is premised on the assertion that Ninth Circuit authority
17 finding Nevada’s foreclosure statute facially invalid requires judgment in Plaintiff’s favor
18 notwithstanding any notice it may have received. *See, e.g.,* Docket No. 83 at 6. While Plaintiff cites
19 authority favorable to it, its own motion for summary judgment acknowledges contrary authority. *See*
20 *id.* at 6 n.3; *see also Bayview Loan Serv., LLC v. SFR Investments Pool 1, LLC*, 2017 WL 1100955, at
21 *4-5 (D. Nev. Mar. 22, 2017) (rejecting arguments similar to those presented by Plaintiff here based on
22

23 ¹ The pending motion is somewhat unusual in that it is the plaintiff seeking a stay of discovery
24 pending resolution of its dispositive motion. As such, the Court modifies the applicable standards in that
25 it is taking a preliminary peek to determine whether it is convinced that dispositive relief will be granted to
26 Plaintiff vis-a-vis its motion for summary judgment.

27 ² Conducting this preliminary peek puts the undersigned in an awkward position because the assigned
28 district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*,
278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to
prejudice its outcome. *See id.*

1 Ninth Circuit authority “that receipt of actual notice deprives a claimant of standing to raise a procedural
2 due process claim”). As such, the Court is not convinced that Plaintiff will prevail on its motion for
3 summary judgment, such that conducting discovery will be a waste of effort. *See, e.g., Vegas Prop.*
4 *Servs.*, 2017 U.S. Dist. Lexis 66682, at *3 (denying stay for same reason).

5 Accordingly, the Court **DENIES** Plaintiff’s motion to stay discovery.

6 IT IS SO ORDERED.

7 DATED: August 14, 2017

8 
9 _____
NANCY J. KOPPE
United States Magistrate Judge